



United States Department of the Interior



OFFICE OF THE SECRETARY
Office of Environmental Affairs
1002 NE Holladay Street, Suite 354
Portland, Oregon 97232-4181

January 14, 1991

To: Natural Resources Trustees

From: Regional Environmental Officer, Pacific Northwest Region

Subject: Workshop Natural Resources Damage Assessment Rule (NRDA) - 43 Part 11 Portland, Oregon, February 7-8, 1991.

As follow up to our notice of November 14, 1990, we have attached an agenda for the Department of the Interior's Natural Resources Damage Assessment (NRDA) workshop hosted by the Oregon Department of Fish and Wildlife.

Please pass this notice and information on to appropriate members of your agency. The following information should be of assistance in arranging your attendance at the workshop:

Date/Time: February 7, 1:00 - 5:00 pm,
February 8, 8:00 - 3:00 pm

Location: Red Lion Motor Inn, Jantzen Beach
Portland, Oregon
Phone: (503) 283-4466

If you have any questions, please call me or my Staff Assistant, Preston Sleeper, at (503) 231-6157, or FTS 429-6157.

We look forward to seeing you at this workshop.

Charles S. Polityka
Regional Environmental Officer

Attachment

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U.S. DEPARTMENT OF THE INTERIOR
Office of Environmental Affairs
Briefing: Natural Resource Damage Assessment
Rule (NRDA) - 43 CFR Part 11
Portland, Oregon
February 7-8, 1991

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February 7, 1991

WELCOME: Charles Polityka, OEA, Portland
Nancy MacHugh, Oregon Department of
Fish and Wildlife 1:00 - 1:10 PM

INTRODUCTION: Steve Specht/Preston Sleeper 1:10 - 1:30 PM

- o DOI & OEA responsibilities
- o CERCLA and CWA authorities
- o Trustee Role and Responsibilities
- o Restoration of Natural Resources

NRDA HIGHLIGHTS: Dave Rosenberger 1:30 - 2:15 PM

- o CERCLA's cause of action for trustees
- o NRDA goal - restoration
- o NRDA benefits:
 - Defined assessment process
 - Injury definitions
 - Translates injuries into monetary damages

BREAK 2:15 - 2:30 PM

BRIEF REVIEW OF EXAMPLE OR CASE STUDY

OVERVIEW OF THE NRDA PROCESS: Linda Burlington 2:30 - 3:30 PM

- o ADMINISTRATIVE PROCESS
 - Notification/Detection
 - Preassessment screen
 - Assessment planning
 - Post assessment
- o RESTORATION PLAN

NRDA TYPE B INJURY: Rosenberger 3:30 - 4:30 PM

- o Biological injury

QUESTIONS/DISCUSSION: Polityka 4:30 - 5:30 PM

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February 8, 1991

NRDA TYPE B - INJURY (CONTINUED):	8:00 - 9:00 AM
o Injury definitions (Cont.)	
o Pathway of contamination	
o Testing and sampling methods	
NRDA TYPE B - QUANTIFICATION: Rosenberger	9:00 - 9:30 AM
o Resource services	
o Measuring baseline	
NRDA TYPE B - DAMAGES (DOLLARS): Burlington	9:30 - 10:15 AM
o Restoration costs	
o Lost use values	
BREAK	10:15 - 10:30 AM
HYPOTHETICAL TYPE B CASE STUDY	10:30 - 11:30 AM
LUNCH	11:30 - 12:30 PM
NRDA TYPE A: Rosenberger	12:30 - 1:00 PM
NRDA LEGAL ISSUES: Burlington/Caroline DiBona	1:00 - 2:00 PM
o Recent Court Decision	
o NRDA Administrative Record	
o Settlements	
o Statute of Limitations	
QUESTIONS/DISCUSSION: Polityka	2:00 - 3:00 PM
CLOSE	

Natural Resource Damage Assessment Workshop Scenarios

Superfund Site

A creosote wood treatment plant owned and operated by Benjamin Railroad Company treated and stored logs at its location near North Plant, Oregon. This plant operated for nearly 40 years, ceasing treatment in December 1983.

Chlorophenol, chromated copper arsenate (CCA) and pentachlorophenol were used to treat the logs. During its 40 year history the plant changed ownership six times. Four pressurized retorts eight feet in diameter and 85 feet long were used for treating the posts.

Wood by-products such as bark and scraps were dumped into a lagoon (existing wetland) 150 X 325 feet long. Most of the chlorophenol and copper arsenate were located in this pond, but today the CCA is scattered throughout the site and is especially concentrated around a butt tank 60 feet X 25 feet long. The butt tank was used for non-pressurized wood (log) treatment.

Groundwater from the site flows in a southwesterly direction toward Fish Creek. The soil from the area is so "hot" it must be removed from the area to Arlington for disposal. Department of Environmental Quality (DEQ) and Environmental Protection Agency (EPA) testing of Fish Creek reveals high concentrations of CCA, and PCB's as follows:

<u>Pollutant</u>	<u>Concentration (Milligrams/Liter)</u>
Arsenic	7.2
Copper	2.8
Chromium	4.1
Trichloroethane	5.2
Acetone	1.7-2.1
Ethylene Benzene	52
Toluene	19
Xylene	200

An unnamed tributary to Fish Creek flows through the wood treatment site and joins Fish Creek approximately one half mile from the wood treatment site. This confluence with McKay Creek forms a one square mile wetland. Benthic invertebrate sampling in the tributary and downstream from the confluence of McKay Creek for a distance of four miles indicates low abundance and diversity of aquatic insects. Benthic samples taken above the confluence (above the treatment plant) shows an abundant and diverse benthic invertebrate population including caddis flies, mayflies and stoneflies. The adjoining wetland is a feeding area and nesting area for waterfowl and a feeding and nursery area for great blue herons. An adjacent heron rookery is located within one mile of the wetland.

Fish Creek joins the Eagle River which supports Chinook salmon, steelhead, coho salmon, and cutthroat trout. McKay Creek is spawning and rearing habitat for these species. Habitat characteristics of McKay Creek appear especially ideal for these salmonids, however, no spawning or rearing of these fish has been observed during spawning ground counts or electrofishing inventories in Fish Creek. In addition no salmonids have been observed in the past 10 years for a distance of three miles downstream in the McKenzie River.

"Sores" and lesions have been observed on squawfish and whitefish specimens collected by DEQ. Biologists are uncertain, to date, as to the cause but they've observed the "sores" only very incidentally elsewhere in the state.

In addition, waterfowl (duck only collected) show degenerative central nervous system tissue and liver necrosis. Nongame biologists show heron rookery data collected over the past 14 years demonstrating a constant decline in production due to low nest attentiveness and poor egg survival. One adult blue heron was found dead in 1989 with some toxins found in its liver but USFWS veterinarians say cause of death tied to the wood treatment plant is "arguable".

Sevin Spill

A truck tanker transporting Sevin (Agricultural Pesticide) owned and operated by Basic Transportation Company failed to negotiate a turn and careened off an Oregon highway where it crosses Bear Creek, near the Bear Creek-Trout River confluence. The truck rolled over twice and came to rest inverted in Bear Creek. The uninjured driver tried in vain, to secure the damaged tanker top hatch but most of the entire load of 2,300 gallons of Sevin spilled into Bear Creek. The pesticide was carried downstream to the Trout River.

Scenarios
February 7-8, 1991
Page 3

Biologists from the nearby Indian Reservation, US Forest Service, and the Oregon Department of Fish and Wildlife responded. Oregon State Police cited the driver for an expired chauffeurs license and for driving under the influence of intoxicants. Water samples collected by the Oregon Department of Fish and Wildlife and analyzed by Oregon Department of Agriculture Laboratory indicates acutely toxic concentrations of Sevin for ten samples taken from just below the spill site up to ten miles downstream.

Dead fish, mostly squawfish and shiners, were counted by ODFW using procedures outlined in ODFW's Fish Kill Investigation Procedures. Many gamefish including bull trout, (listed as Category II "sensitive" under provisions of the Endangered Species Act) were also counted.

Creek water samples collected above the spill site show no Sevin. The spill occurred within the National Forest and is part of Tribal ceded lands. Lamprey killed have significant value to the Tribes.

2/7/1991 mtg

U. S. Department of the Interior
Office of Environmental Affairs
Talking Points for Seattle Workshop

Purpose of the briefing

- Purpose of this briefing is to describe the Natural Resource Damage Assessment process for EPA officials ("NRDA").
 - To develop unified Federal position on Superfund sites litigation is administration policy, responsibility of all Federal agencies.
 - To set the stage for working together cooperatively at appropriate steps throughout the process of evaluating Superfund sites (and spill incidents)
 - making cleanup and restoration decisions, and implementing them effectively
 - involving PRPs, other Federal agencies, States, communities; enhancing public understanding of roles and responsibilities and accomplishments.
 - To increase EPA understanding of Interior/trustee needs for data/information.
 - Background in EPA document: Environmental Evaluation Manual, Volume II of Risk Assessment Guidance for Superfund (EPA/540/1-89/001).
 - Consider later workshops with REOs and resource people on application of procedures at specific sites, lessons learned, etc.

Responsibilities of Interior and Office of Environmental Affairs

- The Secretary of the Interior is the trustee for natural resources. The trustee authority has not been delegated.* Bureau authorities define the resources we "manage or protect".
 - * Except to the Solicitor for specific communications with the Department of Justice.
- Office of Environmental Affairs has had Department lead in guidance and coordination for NEPA policies and procedures for twenty years. It has had the comparable role for Superfund for nine years.
 - Nine Interior mission bureaus and offices, plus Solicitor, and Policy, Management, and Budget functions; OEA expedites access to appropriate expertise or authority -- one stop shopping -- and oversees Departmental compliance with, and reporting on, environmental compliance...

CERCLA and CWA authorities

- (Covered later in NRDA briefing...)

What and who is a trustee

- "The President": delegated to Federal agencies by name in the Executive Order; described further in Subpart G of the National Contingency Plan.
 - Resources under Federal management or protection e.g.
 - land (Interior for National Parks, Refuges, public lands; Defense for military reservations; Energy for their facilities...
 - non-fixed resources: migratory birds, anadromous fish; marine mammals and endangered and threatened species wherever found
 - especially because of latter category, Interior and NOAA in Commerce are Federal trustees most frequently encountered.
 - see NCP Subpart G for further information; recognize that Subpart G suggests trustee responsibilities by way of example for information of OSCs and others; it is not a plan for trustee activities.
- "The Governors": delegated to trustee agencies; Administrator of EPA informed; one or more States agencies (or individuals) are named.
 - Resources within State boundaries
(note the geographical determination vs "manage or protect" for Federal agencies)
- Indian Tribes
 - May conduct their own assessments OR
 - May request Secretary of the Interior to conduct assessment; Department must consider request.
 - OEA Regional Environmental Officers can assist with contacts in BIA to expedite contact and communication with Tribal governments, which have independent status and responsibilities comparable to that of States to States under CERCLA.
- Private citizens or entities are not trustees. Citizen suits are authorized, but they are actions against the trustee agencies for not carrying out their authorized responsibilities.

Trustee role and responsibilities (from Interior view point)

- The goal of natural resource trustees is restoration of natural resources to pre-spill or release conditions. A damage assessment is only a part of the process -- and may not always be necessary -- to effect restoration.
- The Office of Environmental Affairs coordinates the various bureaus and offices of the Department
 - REO brokers and expedites determination of Department missions or functions needed to contribute to decisions leading to a damage assessment OR to a negotiated settlement or other trustee actions;
 - considerations include: trustee responsibilities (including potential State concerns), technical assistance sources, issue

- and implementation documents, cost accounting for damage assessments and restoration activities, reports and briefings for Department officials, etc.
- A Deputy Assistant Secretaries Group representing all Department functions, including the immediate Office of the Secretary and the Solicitor, will establish policies and priorities.
 - OEA staff and a bureau contacts group will staff decisions -- policy, management, budget and fiscal.
 - A team of three or more will always be involved in Interior decisions: OEA, Fish and Wildlife Service, and the Solicitor PLUS other bureaus/offices for trustee responsibilities or technical assistance in support of the Secretary's decisions.
 - Includes preassessment decisions, litigation and negotiation strategies and settlements, restoration plans, etc.)
 - SOL and FWS are in process of delegating responsibility for certain activities to their regions. OEA Regional Environmental Officers have the authority they need.
 - Signature levels for documents will be determined case by case.
 - The Department has OMB approval to establish a fund for the purpose of paying for damage assessments and receiving awards or contributions from potentially responsible parties (PRPs), and funding the resulting restoration activities.
 - To be announced in the 1992 President's Budget (release date: February 4), to be available at the beginning of the next fiscal year, October 1. (Proposed at \$5M.)
 - Coordination with other trustees
 - Interior and NOAA and Agriculture have been working with the Department of Justice to draft a "model" memorandum of agreement among trustee agencies;
 - provides for Federal coordination, a coordinating trustee, establishment of procedures for agreeing on and coordinating trustee activities.
 - Trustee agencies are also developing draft basic procedures for use in spills or emergency releases.
 - (Will be circulated for review and comment within trustee agencies shortly, and thereafter with cooperating agencies, including State agencies).
 - Coordination documents simply capture existing experience -- please ask REOs, OEA headquarters, and comparable officials in other trustee agencies for information when you start on an unfamiliar course of action: clear "de facto" groundrules exist.

Trustee notification and coordination

- Trustee agencies are to be notified by EPA (and Coast Guard), by law and NCP;
 - Response activities (including site remedial actions) are coordinated with trustee activities but
 - EPA (and Coast Guard) are not trustee agencies, and have no authority over trustee agencies; note that NCP covers

notification of trustees, but does not include trustee activities.

- Provision in law requires EPA notifying and involving trustees and sharing information; not a provision for EPA to coordinate trustees. (Note NCP as rule for Superfund implementation.)
- Procedures for notification are established on a Regional basis within overall policy guidance from headquarters...
- Preliminary natural resource surveys (PNRS) are a tool for coordination
 - PNRS procedure developed under MOU with EPA to insure unified Federal position on enforcement of both cleanup and natural resource provisions of CERCLA
 - EPA requests Interior PNRS on list of sites scheduled for coming year (\pm); Interior report letter to EPA includes findings, Interior position on its trustee interests, or further information needs, and any suggestions for continued coordination needs.
 - PNRS is a review of available site information
 - EPA information: FIT team reports, hazard ranking, preliminary assessment/site inspection or investigation (PA/SI), remedial investigation/feasibility study (RI/FS), record of decision (ROD), technical studies in support of the above, etc.
 - PNRS includes check for additional existing Interior information on the area (EIS, hydrologic studies, etc.)
 - PNRS leads to delineation of Interior's position on its trustee involvement for site (or operable unit, or stage of cleanup operations, depending on EPA request and status of site activities at time of EPA request.
 - EPA pays for initial PNRS and possible subsequent follow-up PNRS to ensure timeliness in reaching unified Federal position in litigation or other negotiation with PRPs.
 - PNRS, especially ones requested early in the process, can also provide opportunity for EPA to obtain technical assistance from Interior bureaus and offices such as FWS, GS, Mines, Reclamation, and others; however
 - technical assistance in support of EPA remedial actions is separate from natural resource trustee responsibilities, governed by separate authorities; and
 - information gathered for technical assistance purposes can be useful in making trustee decisions;
 - decisions on trustee responsibilities may be made through somewhat different chains of command than decisions on technical assistance to EPA.
 - A PNRS is not a part of the damage assessment process, nor a necessary pre-requisite to a damage assessment. The information contained in a PNRS, however, may well contribute to a preassessment screen (see NRDA procedures).

ATTENDANCE LIST
U. S. DEPARTMENT OF THE INTERIOR

TOPIC: NRDA BRIEFING
 LOCATION: PORTLAND
 DATE: 2/7-8/91

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